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C O N F I D E N T I A L CARACAS 000498

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TAGS: PGOV PHUM KDEM VE
SUBJECT: OPPOSITION LEGAL CRUSADER SENTENCED FOR DEFAMATION

REF: A. 04 STATE 3944
B. 04 CARACAS 3291

Classified By: Abelardo A. Arias, Political Counselor,
for Reasons 1.4(b).

Summary

¶1. (C) Constitutional lawyer Tulio Alvarez_ was sentenced on February 10 to two years and three months in prison for defamation of character in a trial fraught with irregularities. Alvarez_ received the sentence for accusing pro-Chavez legislator Willian Lara of corruption in the handling of National Assembly funds. Alvarez_, who was the editor of the opposition's report of fraud in last year's recall referendum, made the allegedly defamatory comments in public discussion of the case of former National Assembly workers who he represents. The workers allege Lara wrongfully dismissed them and then denied them pension rights. Now facing a prison sentence, Alvarez_ says he will mount a "political resistance" movement against President Hugo Chavez, with the goal of an opposition boycott of next year's presidential elections if the electoral system is not fixed. End summary.

Whistleblower Sentenced

¶2. (U) High profile Venezuelan lawyer Tulio Alvarez_ was sentenced on February 10 to two years and three months in prison for defaming of character against a pro-Chavez legislator. Alvarez_, representing an association of former National Assembly workers, filed charges against Willian Lara, a Fifth Republic Movement (MVR) Deputy, for misuse of pension funds when the latter was president of the National Assembly. When Alvarez_ commented publicly on the case to the press, Lara sued Alvarez_ for defamation of character. The sentence handed down lengthens the normal criminal libel punishment because the offense was "aggravated" (printed in the press) and "continuous" (Alvarez_ repeated his allegations, even after being convicted). The sentence should be published by February 20, after which Alvarez_ has 10 days to appeal. The time periods give Alvarez_ up to two months before he is incarcerated. (Note: Alvarez_ had previously gained notoriety for alleging corruption in the administration of President Hugo Chavez, including several cases personally implicating Chavez. The Attorney General has taken no action on Alvarez_ 's complaints.)

Irregularities/Harassment In Trial

3.(C) Alvarez_ told poloff February 11 his case was an egregious violation of due process. The case proceeded at an incredibly fast pace by Venezuelan standards, pushed by Lara's attorney Esther Bigott, who is known as Chavez's personal lawyer. A representative of the pensioners' association testifying on Alvarez_ 's behalf, for example, was detained briefly when Bigott accused the witness of lying. Alvarez_ noted also that the judge took the unprecedented step of issuing a travel restriction on Alvarez_ prior to the trial, which he called a rarity in libel cases (ref a). "My only crime," he said, "was to given an opinion."

¶4. (C) Alvarez_ also said he was being personally harassed. The evening after sentence was handed down, for example, someone ransacked his law office, destroying two computers in the process. Alvarez_ said the intruders, who were not identified, defecated on his legal papers. Additionally, he said, investigators had broken into his Hotmail e-mail account and intercepted his e-mails. Alvarez_ said a trial witness told him the judge had shown her correspondence between Alvarez_ and her. Alvarez_ asserted that commandos from the GOV's intelligence service (DISIP) had been following him throughout the proceedings. He told poloff he had expected to go straight to jail and did not understand why he had been allowed to remain free pending appeal.

Rather than seek asylum in another country, Alvarez_ said, he is prepared to serve out his time.

A Political Lynching

15. (C) Upon being sentenced, Alvarez_ mirthfully told reporters he had undergone a political lynching. He said that from that day forward, he would no longer work as an attorney because "the law no longer exists." (The sentence does not prohibit him from practicing law, and Alvarez_ has also said he would continue to work for his clients' interests.) He told poloff the motive behind his political persecution was to halt his fraud investigation, which he had coordinated on behalf of the Coordinadora Democratica after the recall referendum (ref b). Alvarez_ had made a successful trip to Colombia in December to give conferences about fraud in the August 2004 referendum. Alvarez_ said he also had given the Government of Colombia evidence of FARC guerrillas who had been given national identity cards in the states of Apure and Amazonas in the run-up to the referendum. He said the GOV knew of his plans to travel to New York and Madrid in January to give additional presentations, which is why the judge put him on travel restriction.

The "Political Resistance" Begins

16. (C) Alvarez_ said the political "opposition" is dead and that Venezuela is entering the phase of "political resistance" to an authoritarian regime. He said Chavez's two vulnerabilities are the crimes against humanity committed on April 11, 2002, and the August 15 referendum vote fraud. Alvarez_ said he planned to publish a book about the fraud in March, followed by a book on April 11 later in the year. (Alvarez_ is also a published humor writer).

17. (C) Alvarez_ said he has also been working with U.S. filmmaker Steve York on a documentary about the period between April 11 and August 15 (York did the film "Bringing Down a Dictator" about Slobodan Milosevic's downfall). He also plans to appeal his case to the Inter-American Court of Human Rights. Alvarez_ said he has been in regular communication with the Canadian, Spanish, and Dutch ambassadors. He is working with FUNDAES, a local human rights NGO, to foster support for his case.

18. (C) Alvarez_ told poloff he has also formed "Fundacion Verdad Venezuela" ("Venezuela Truth Foundation") to defend democratic ideals, the rule of law, and freedom of expression. He said he has spurned approaches by political parties offering support. The foundation will push two themes: unity among opposition groups and the right to participate. Alvarez_ said the first target is the board of the National Electoral Council (CNE), which he said is subordinated to Chavez. He said he is preparing proof of corruption among the CNE board members in the acquisition of the electronic voting machines. Alvarez_ said the goal is for the opposition to gain democratic space via the electoral system. If free and fair elections are not possible, Alvarez_ said, he will advocate an opposition boycott in future elections.

Comment

19. (C) Alvarez_ is an intelligent lawyer who has resisted formally linking himself to the opposition. His attacks on the GOV have been smart, perhaps a little splashy, but usually well documented. His prosecution is clearly an attempt to silence a political opponent of Chavez. We expect it to have little of the desired effect on Alvarez_, at least during the time it takes his appeal to wend through Venezuela's courts. Jailing Alvarez_, if it comes to pass, would be a milestone event that could energize Chavez opponents; but because of Alvarez_ 's loner style, the spark may fall short of being a substantial catalyst.

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